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In re Application of: HUBER et al.

Serial No.: 10/070,275

Filing Date: March 6, 2002

Attachments: Application for Patent Term Adjustment under 37 CFR 1.705

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of )  
HUBER et al. )  
Serial No.10/070,275 )  
Filing or 371(c) Date: March 6, 2002 )  
For: CATALYST AND PROCESS FOR THE HYDROGENATION OF CARBONYL COMPOUNDS

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Confirmation No.: 2893

Examiner: PRICE

Art Unit: 1621

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APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705

Applicants urge that the patent term adjustment for the patent issuing on the above-reference application should be 881 days.

According to 37 CFR 1.703(a)(2), the period of adjustment includes the number of days in the period beginning on the day after the date that is four months after the date a reply under 37 CFR 1.111 was filed and ending on the date of mailing of either an action 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151, which ever occurs first. In the present case, applicants filed a reply under 37 CFR 1.111 on April 7, 2003 and a notice of allowance was mailed on January 9, 2006. No action under 35 U.S.C. 132 was mailed between April 7, 2003 and January 9, 2006. Thus, the period beginning on the day after the date that is four months after the date a reply under 37 CFR 1.111 was filed and ending on the date of mailing of the notice of allowance is 886 days (from August 7, 2003 to January 9, 2006).

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Applicants further note that the Patent Term Adjustment History on the PAIR system is clearly erroneous inasmuch as the reply of April 7, 2003 is not listed therein, although said reply correctly appears in the Image File Wrapper.

According to 37 CFR 1.704(b), the period of adjustment set forth in § 1.703 shall be reduced by the number of days beginning on the date that is three months after the date of mailing of an Office communication notifying the applicant of a rejection and ending on the date the reply was filed. In this case, an Office action was mailed on January 2, 2003 and applicants replied thereto on April 7, 2003. Accordingly, the period of adjustment should be reduced by 5 days, making the period of adjustment 881 days.

It is also noted that according to 37 CFR 1.704(c)(4), the period of adjustment set forth in § 1.703 shall be reduced by the number of days beginning on the day after the date two months from the mailing date of a notice of abandonment and ending on the date a petition to withdraw a holding of abandonment was filed. In this case, a notice of abandonment was allegedly mailed on September 30, 2003 and a petition to withdraw holding of abandonment was filed on June 24, 2005, thus amounting to a period of 572 days (November 30, 2003 to June 24, 2005). Even if the period of adjustment were reduced by 572 days, the remaining patent term adjustment would still be 309 days. However, as noted in the petition to withdraw holding of abandonment of June 24, 2005, the Patent Office erroneously mailed the notice of abandonment to the wrong address and it was never received by applicants or their representative. Accordingly, applicants urge that and delay in filing the petition to withdraw holding of abandonment did not constitute a failure to engage in reasonable efforts to conclude processing or examination of the application, and no reduction in patent term adjustment should be made due to such delay.

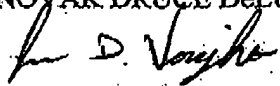
Any patent issuing on the present application is not subject to a terminal disclaimer.

HUBER et al., Ser. No. 10/070,275

Please charge the \$200 fee under 37 CFR 1.18(e) to the credit card listed on the enclosed form PTO-2038.

Please charge any shortage in fees due in connection with the filing of this paper to Deposit Account No. 14:1437. Please credit any excess fees to such account.

Respectfully submitted,  
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